

### REMARKS

Claims 1-3, 5, 7 and 21-23 were examined. Claim 1 and claim 5 are amended. Claims 1-3, 5, 7 and 21-23 remain in the application.

The Patent Office rejects claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §112, first paragraph and claims 1-3 and 21-23 under 35 U.S.C. 112, second paragraph. Claims 1-3, 5, 7 and 21-23 are rejected under 35 U.S.C. §102(e) and/or 103(a). Reconsideration of the claims is respectfully requested in view of the above amendments and the following remarks.

**A. 35 U.S.C. §112, First Paragraph: Rejection of Claims 1-3, 5, 7 & 21-23**

The Patent Office rejects claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §112, first paragraph.

The Patent Office believes the phrase, "at least about twenty three percent by weight a moisturizer" of claims 1-3 and 21-23 is not supported in the Specification because none of the recited representative moisturizers (e.g., safflower oil, octyl palmitate and propylene glycol) meet Applicant's definition of a moisturizer to act as a barrier and draw moisture. Further, the Patent Office believes the claims are not supported because none of the moisturizers individually are present in an amount of 23% or greater.

In terms of the definition, the application describes moisturizers in the following way:

In one embodiment, the composition comprises a base that is capable of suspending the plurality of abrasive particles within the base. One particular component, that in one embodiment is included as a principal component in the base, is a moisturizer. Moisturizers are believed to reduce water loss from the skin and draw moisture from inner skin layers up into the outer skin layer. In this regard, in one embodiment, the moisturizer includes a substance that attracts moisture to the top skin layer (a humectant). Suitable humectants include glycerin, propylene glycol, alpha hydroxy acids, urea, and lactic acid. The

moisturizer may also include substances that tend to reduce water loss by creating a barrier. Such substances include petrolatum, mineral oil, lanolin and silicone derivatives.

Application, at 3, paragraph 14. The quoted language does not say that a moisturizer must act as barrier and draw moisture. The language shows that moisturizers include those materials that may have a property that acts as a barrier or draws moisture.

To the extent that the Patent Office is requiring that at least one of a component that has a property of a moisturizer be present in the composition in at least about 23%, Applicant believes that it is not a requirement of the claims. Claim 1, for example, does not require that only a single component that has a property of a moisturizer total at least about 23% by weight of the base.

Paragraph 19 of the Application provides one example of a composition, including octyl palmitate (10%), safflower oil (10%), and propylene glycol (2.9%), each of which has a property of a moisturizer. The composition also includes panthenol (1%), which has humectant properties.

In terms of moisturizers, the Patent Office believes water may have moisturizing properties with respect to human skin. Applicant does not believe this is necessarily a correct statement and requests that the Patent Office provide some evidence that water has a moisturizing property with respect to human skin. Is the Examiner saying that exogenous water penetrates skin cells?

The Patent Office believes the application does not support a composition, including at least 23% with respect to the moisturizer and at least 35% corundum by weight as specified in claims 1-3 and 21-23 and 5 and 7, respectively. As noted in a previous response, the Patent Office has the initial burden of presenting evidence for reasons why a person skilled in the art would not recognize in the specification disclosure, a description of the invention defined by the claims. The Examiner has not

done this for either at least 23% with respect to the moisturizer of claims 1-3 and 21-23 or at least 35% with respect to corundum of claims 5 and 7. The Examiner's "support" is paragraphs 16 and 17 of the application where the Examiner says the ranges of at least 23% moisturizer and "at least 35%" corundum are not supported.

As a preliminary matter, the example provided at paragraph 19 describes one embodiment of a composition, including 35% aluminum oxide and at least 23% moisturizers (see above discussion).

Paragraph 16 describes an embodiment of the composition that includes a cleansing component. In that embodiment, the composition includes 20-70% corundum, 20-70% aloe gel and 5-20% sodium lauryl sulfate.

Paragraph 17 describes another example of corundum in a cream moisturizer base. The corundum is present in one embodiment in an amount of about 5-100 grams per ounce of cream. In another embodiment, 10-50 grams per ounce. And, in another embodiment, 10-20 grams per ounce of cream.

The Patent Office believes there is no support in the application for an average particle size being 124 microns as recited in claims 5 and 7. The Patent Office again cites *In re Lukach* and *In re Smith*. The Patent Office also cites *In re Wertheim (II)* for a holding that where a limitation was within a broader disclosure of a parent case, the limitation constituted new matter and was relevant because the limitation avoided the prior art. Applicant believes this has no relevance to the 35 U.S.C. §112, first paragraph analysis required here. It cannot be relevant for purposes of 35 U.S.C. §112, first paragraph, that a limitation was added to avoid the prior art. *In re Wertheim (II)* was concerned with the priority date of anticipatory matter with respect to related applications.

Applicant maintains that *In re Wertheim (I)* is directly relevant to whether an average particle size of 124 microns is supported by the specification.

*In re Wertheim (I)* is a precedent subsequent in time to both *In re Lukach* and *In re Smith*. *In re Wertheim (I)* directly addresses the holdings of both of these cases and provides a guiding discussion of the manner in which a written description requirement should be determined. See *In re Wertheim (I)* at 96. As noted by the Court, in *In re Wertheim (I)*, *In re Lukach* appropriately sets forth the proposition that "the invention claimed did not have to be described in *ipsis verbis* in order to satisfy the description requirement of section 112." See *In re Lukach* at 796. *In re Lukach*, *In re Smith*, and *In re Wertheim (I)* all clearly set forth that the manner in which a written description requirement should be analyzed on a case by case basis with close attention to the facts of the case to determine whether an application conveys to those skilled in the art information that this Applicant invented the subject matter of the claims. See *In re Smith* at 683 ("precisely how this description must come to comply with section 112 must be left to case by case development") and *In re Wertheim (I)* at 97 ("mere comparison of ranges is not enough, nor are mechanical rules a substitute for the analysis of each case on its facts to determine whether an application conveys to those skilled in the art the information that the applicant invented the subject matter of the claims").

The Patent Office's statement that the ruling in *In re Wertheim (I)* is based on the fact that there was specific embodiment of 36 percent and the minimum of the claimed range was 35 percent is simply inaccurate. In fact, the claims in *In re Wertheim (I)* specifically claims 2, 37 and 38 claimed a range of between 35 percent and 60 percent which was supported by a broad range in the description of 25 percent to 60 percent. See *In re Wertheim* at 98 ("claims 2, 37, and 38 which claim a solids content range of 'between 35 percent and 60,' present a different question. They clearly claim a range within the described broad range of 25 percent to 60 percent solids; the question is

whether, *on the facts* the PTO has presented sufficient reason to doubt the broader described range also describes the somewhat narrower claimed range. We note that there is no evidence, and the PTO does not contend otherwise, that there is in fact any distinction, in terms of operability of Appellant's process or of the achievement of any desired result between the claimed lower limit of solids content and that disclosed in the Swiss application.") Thus, the facts in *In re Wertheim* are directly analogous to the facts of the present case where the Applicant claimed ranges that fall directly within broader ranges described in the specification. Further, the narrow ranges in the present application have the same ability to produce the same desired results as the broader range in contrast to the fact scenario of *In re Lukach*, which the Examiner cites against the present application where the Applicant relies on a single example ratio of 2.6 in the specification to support a claim to a range of ratios between 2.0 and 3.0. See *In re Lukach* at 797. Thus, the proper analysis in this case is to look closely at the actual circumstances of the description in relation to the claims to determine if one of ordinary skill in the art would understand that the Applicant possessed the invention at the time of filing. In this regard, the case of *In re Wertheim (I)* is directly on point with the facts of the instant application. And thus for the same reasons set forth by the Court in *In re Wertheim (I)*, claims 1 and 5 meet the written description requirement of 35 U.S.C. § 112, first paragraph. Accordingly, reconsideration and withdrawal of the written description requirement rejection are requested.

Applicant respectfully requests the Patent Office withdraw the rejection to claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §112, first paragraph. Applicant believes all the Examiner's issues were addressed with respect to the 35 U.S.C. §112, first paragraph rejection and controverted.

**B. 35 U.S.C. §112, Second Paragraph: Rejection of Claims 1-3 & 21-23**

The Patent Office rejects claims 1-3 and 21-23 under 35 U.S.C. §112, second paragraph as indefinite. Specifically, the Patent Office cites to the phrase, "about twenty three percent". The Patent Office cites *Amgen, Inc. v. Chugai Pharmaceutical Co., Ltd.*, 18 USPQ2D 1016, 1030-31 (CAFC 1991). *Amgen* dealt with a claim term of "at least about 160,000 IU/AU" to define a specific activity limitation held to be indefinite by a lower court because (1) bioassays provide an imprecise form of measurement with a range of error and (2) there is a range of error already inherent in the specific activity limitation. Thus, the "about 160,000 IU/AU" limitation did not distinguish the invention over close prior art of 120,000 IU/AU, or permit one to know what specific activity values below 160,000 IU/AU might constitute infringement. The Court of Appeals supported the lower court holding because there was nothing in the specification, prosecution history, or prior art providing any indication as to what range of specific activity is covered by the term, "about" and because no expert testified as to a definite meaning for the term in the context of the prior art.

In this case, the application describes amounts of moisturizer in a base in terms of whole numbers (e.g., 20-70% aloe gel). The individual ingredients provided in the example in paragraph 19 having moisturizing properties are represented in terms of percentages to a first decimal (tenths). Applicant does not believe that the measurement of ingredients, such as octyl palmitate, safflower oil, or propylene glycol by chemists of ordinary skill in the art of manufacturing compositions such as claimed, have an inherent large range of error.

Applicant respectfully requests that the Patent Office withdraw the rejection to claims 1-3 and 21-23 under 35 U.S.C. §112, second paragraph.

**C. 35 U.S.C. §102(e)/103(a): Rejection of Claims 1-3, 5, 7 & 21-23**

The Patent Office rejects claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §102(e) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,290,976 of Messenger, (Messenger). In a previous response, Applicant submitted an Affidavit under 37 CFR §1.131 to overcome the rejection of Messenger. The Patent Office believes such Affidavit cannot be used where a U.S. patent claims the same invention, citing MPEP 715. With respect to obvious variations, the Patent Office cites to Example 1 of Messenger and states that, "one of ordinary skill in the art would expect that the composition in example 1 would be a suitable embodiment of the claims 1-7 of said patent."

The Patent Office example does not show how the rejected claims are an obvious variant of Messenger for purposes of MPEP 715. The Patent Office is comparing the pending claims to an example in the specification of Messenger, not the claims of Messenger. Applicant believes, in this context, a 37 CFR 1.131 Affidavit is effective and respectfully requests that the Patent Office reconsider the Affidavit submitted.

For the above-stated reasons, Applicant respectfully requests that the Patent Office withdraw the rejection to claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §102(e) or 35 U.S.C. §103(a).

**D. 35 U.S.C. §102(b)/103(a): Rejection of Claims 1-2 & 21-22**

The Patent Office rejects claims 1-2 and 21-22 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,294,179 of Lee, et al. (Lee), or, in the alternative, under 35 U.S.C. §103(a) as obvious over Lee.

Independent claim 1 recites a composition comprising a base, comprising at least 23% by weight a moisturizer suitable for application to human skin. The Patent Office believes Lee teaches the required amount of moisturizer by including a water

component of Lee as a moisturizer. According to the Patent Office, "water clearly provides moisture and is present in an amount greater than 20% which in combination with or without the surfactants, hectorite and/or xantham gum appears to fall within the scope of the limitation moisturizer." The Patent Office has provided no evidence that water "provides moisture" so as to be a moisturizer suitable for application to human skin. The Patent Office has provided no evidence that water meets the definition provided by the Patent Office (citing, "the American Heritage Dictionary of English Language, Fourth Edition (2000)). The Examiner has also not indicated how water comes within the examples of moisturizers described in the application, e.g., those that attract moisture to the top skin layer or those that tend to reduce water loss by creating a barrier on the skin. In fact, teachings of U.S. Patent No. 5,219,571 of Wise (disposing bentonite in lipophilic agent to percutaneously absorb into skin) and U.S. Patent No. 5,607,980 of McAtee (using amphoteric surfactants to deliver products to the skin), among other cited references, indicates that water does not have a property of a moisturizer to human skin.

Applicant does not admit that water is a moisturizer with respect to human skin.

For the above-stated reason, independent claim 1 not anticipated by or not made obvious over Lee.

Claims 2, 21 and 22 depend from claim 1 and therefore contain limitations of that claim. For at least the reasons stated with respect to claim 1, claims 2, 21 and 22 are not anticipated or obvious over Lee. With respect to claim 21, the Patent Office continues to believe that the phrase, "where the composition may be left on the skin after application" is an intended use. Applicant disagrees with this interpretation.



The phrase describes a property of the composition. Applicant respectfully requests that the Patent Office withdraw the rejection under 35 U.S.C. §§102(b) and 103(a) of claims 1-2 and 21-22 over Lee.

**E. 35 U.S.C. § 102(b)/103(a): Rejection of Claims 1-3 & 21-23**

The Patent Office rejects claims 1-3 and 21-23 as anticipated by or as obvious over U.S. Patent No. 3,092,111 of Saperstein ("Saperstein") or U.S. Patent No. 4,957,747 of Steifel ("Steifel"). To make its argument, the Patent Office must include water as a moisturizer suitable for application to human skin. As noted above, with respect to the discussion of Lee, the Patent Office has not provided any evidence to show that water may serve as a moisturizer suitable for application to human skin. Accordingly, claim 1-3 and claims 21-23 are not anticipated by or obvious over Saperstein or Steifel because the references fail to describe a composition comprising a base, comprising at least 23% by weight of a moisturizer suitable for application to human skin. Applicant respectfully requests that the Patent Office withdraw the rejection of claims 1-3 and 21-23 under 35 U.S.C. §102(b) or 103(a) over Saperstein or Steifel.

**F. 35 U.S.C. §103(a): Rejection of Claims 1-3, 5, 7, 21 & 22**

The Patent Office rejects claims 1-3, 5, 7, 21 and 22 under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 4,284,533 of Imamura, et al. ("Imamura"). The Patent Office reaches its conclusion by again including water as a moisturizer suitable for application to human skin. Accordingly, claims 1-3 and 21-22 are not obvious over Imamura, because Imamura does not disclose a composition comprising a base, comprising at least about 23% by weight in moisturizer suitable for application to human skin.

With respect to claim 5, this claim includes a composition comprising, "a base in a form of a cream suitable for application to human skin." Applicant's position is that a

plain meaning be given to the word "cream" in the claim. See MPEP §2111.01.

Imamura discloses a composition having a viscosity between 600 and 1000cps. This composition cannot possibly be a cream by any expansive of definition imparted by the Patent Office.

Instead of giving a plain meaning to the word "cream" the Patent Office attacks the efforts made by Applicant to show common uses of that word. Accordingly, the Patent Office has provided no prima facie case of obviousness for claim 5. Accordingly, Applicant believes claim 5 is not obvious over the cited reference. Claim 7 depends from claim 5 and therefore contains all limitations of that claim. For at least the reasons stated with respect to claim 5, claim 7 is not obvious over Imamura.

Applicant respectfully requests that the Patent Office withdraw the rejection of claims 1-3, 5, 7 and 21-22 under 35 U.S.C. §103(a) over Imamura.

**G. 35 U.S.C. §102(b): Rejection of Claims 1-3 & 21-23**

The Patent Office rejects claims 1-3 and 21-23 under 35 U.S.C. §102(b) as anticipated by or in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5, 219,571 of Wise ("Wise").

Wise discloses bentonite in a lipophilic carrier. "The bentonite is preferably colloidal and preferably has a micron size up to 100 microns, although larger sizes of, say, up to 500 microns may be useful. Column 3, lines 6-8. "The carrier portion of the formulation must be lipophilic so that the bentonite will be percutaneously absorbed into the skin." Column 3, lines 11-13.

Claim 1 is not anticipated or obvious over Wise, because Wise does not disclose a composition including a base and a plurality of abrasive particles. It appears that the bentonite that is cited as the particles by the Examiner is in a colloidal form such that it will not abrade or aggravate the skin, but will be

"percutaneously absorbed" into the skin. Wise is directed at treating granuloma annulare in a way that avoids aggravating the affliction. See Wise, Column 3, lines 41-43. "The bentonite must be percutaneously absorbed and must have a small particle size to create the homeopathical healing." Column 3, lines 47-49. Thus, it is not the contact of the skin with the bentonite, but the absorption of the bentonite into the skin that is intended for the healing. Thus, it does not appear that Wise teaches abrasive particles in a composition.

Claims 2-3 and 21-23 depend from claim 1 and therefore contain all limitations of that claim. For at least the reasons stated with respect to claim 1, claims 2-3 and 21-23 are not anticipated or obvious over Wise.

Applicant respectfully requests that the Patent Office withdraw the rejection of claims 1-3 and 21-23 under 35 U.S.C. §102(b) or §103(a) over Wise.

**H. 35 U.S.C. §103(a): Rejection of Claims 1-3 & 21-22**

The Patent Office rejects claims 1-3 and 21-22 under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5,607,980 of McAtee, et al. ("McAtee").

Independent claim 1 describes a composition comprising at least about 23% by weight a moisturizer suitable for application to human skin. The Patent Office believes, "about 23% may include about 20%" as taught by McAtee. The Patent Office acknowledges, however, that it interprets the phrase, "about 23%" to distinguish McAtee. See Office Action, at page 5. Thus, on the one hand, the Patent Office acknowledges an understanding of the phrase, "about 23%" to not include about 20% as recited in McAtee, but on the other hand, claims "about 23%" includes about 20%.

Independent claim 1 is not obvious over McAtee, because McAtee does not describe a moisturizer for a base comprising at least about 23% by weight in moisturizer suitable for application to human skin. Claims 2-3 and 21-22 depend from

claim 1 and therefore contain all limitations of that claim. For at least the reason stated with respect to claim 1, claims 2-3 and 21-22 are not obvious over McAtee. Applicant respectfully requests that the Patent Office withdraw the rejection of claims 1-3 and 21-22 under 35 U.S.C. §103(a) over McAtee.

**I. 35 U.S.C. §102(b): Rejection of Claims 1-2 & 21-22**

The Patent Office rejects claims 1-2 and 21-22 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5,756,081 of Wdowik ("Wdowik").

Wdowik discloses a shaving composition including insoluble solid particulate additives that tend to reduce undesired nicks and cuts and improve post shaved skin smoothness. (See column 3, lines 1-5). The Patent Office directs attention to Example 3 of Wdowik wherein a shaving composition is described containing potassium stearate (5.2%), sodium stearate (1.11%), lauric acid diethanolamide (1.60%), mineral oil (17%), stearic acid (0.14%), coconut fatty acid (0.68%), glycerine (3.2%), PVP (0.12%), perfume (0.37%), water (57.58%), dichlorodifluoromethane (10%), and particulate additive-silica sand (3%).

Independent claim 1 is not anticipated by or obvious over Wdowik, because Wdowik does not disclose a composition comprising a base comprising at least about 23% by weight. A moisturizer suitable for application to human skin. Presumably, the Patent Office includes the amount of water in Wdowik to meet the claim limitation of a minimum amount of a moisturizer. However, as stated above, with respect to Lee, the Patent Office has provided no evidence that water has the property of a moisturizer suitable for application to human skin.

Claims 2 and 21-22 depend from claim 1 and therefore contain all limitations of that claim. For at least the reasons stated with respect to claim 1, claims 2 and 21-22 are

not anticipated or obvious over Wdowik. Claim 21 provides that the composition of claim 1 may be left on after the application. It appears the shaving composition of Wdowik is intended to be removed once it is put on the skin, such as, with a razor.

Applicant respectfully requests that the Patent Office withdraw the rejection of claims 1-2 and 21-22 under 35 U.S.C. §102(b) or §103(a) over Wdowik.

**J. 35 U.S.C. §103(a): Rejection of Claims 1-3, 5, 7 & 21-23**

The Patent Office rejects claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 3,852,417 of McLaughlin (McLaughlin) in view of Wdowik. According to the Patent Office, McLaughlin teaches a shaving composition containing water-soluble soap, a liquid oily material in the range from 12% to 25 %, with mineral oil being preferred. The Patent Office also notes various examples containing mixtures of mineral oil and glycerin.

McLaughlin does not disclose a shaving composition including a plurality of abrasive particles. The Patent Office combines the teachings of McLaughlin with those of Wdowik. Wdowik states:

One preferred exemplary shaving composition of the present invention is based on that described in U.S. Pat. No. 3,852,417 by McLaughlin, but includes added water insoluble organic additives as is follows:

Material	% by Weight
Potassium stearate	5.20
Sodium stearate	1.11
Lauric acid diethanolamide	1.60
Mineral oil (Saybolt viscosity of 75-100 seconds at 100° F.)	15.00
Stearic Acid	0.14
Cocunut fatty acid	0.68
Glycerine	3.20
Polyvinylpyrrolidone (Grade K-30)	0.12
Perfume	0.37
Water	57.58
Dichlorodifluoromethane	10.00
Particulate additive - Nylon fibers	5.00
Total	100.00%

Wdowik, column 4, line 64 thru column 5, line 17. Wdowik also provides:

Another exemplary composition is based on that described in McLaughlin, U.S. Pat. No. 3,852,417 and includes an abrasive and/or organic additives as follows:

Material	% by Weight
Potassium stearate	5.20
Sodium stearate	1.11
Lauric acid diethanolamide	1.60
Mineral oil (Saybolt viscosity of 75-100 seconds at 100° F.)	17.00
Stearic Acid	0.14
Cocunut fatty acid	0.68
Glycerine	3.20
Polyvinylpyrrolidone (Grade K-30)	0.12
Perfume	0.37
Water	57.58
Dichlorodifluoromethane	10.00
Particulate additive - Nylon fibers	3.00
Total	100.00%

Wdowik, Column 5, line 64 through Column 6, line 17.

The examples provided above in Wdowik show that the combination of Wdowik and McLaughlin does not yield the composition comprising a base "comprising at least about 23% by weight and moisturizer suitable for application to human skin" as specified in claim 1. In this case, we have an expert in the shaving composition field (Mark S. Wdowik) combining references and producing a result, shown in Wdowik, that does not fall within the language of claim 1 as noted above with respect to the discussion of Wdowik. Thus, claim 1 is not obvious over the cited references.

Claims 2-3 and 21-23 depend from claim 1 and therefore contain all limitations of that claim. For at least the reasons stated with respect to claim 1, claims 2-3 and 21-23 are not obvious over the cited references. Applicant also notes that claim 21 provides that the composition of claim 1 may be left on the skin after application. Both McLaughlin and Wdowik describe shaving compositions where it is not intended that the compositions be retained on the skin after application.

Independent claim 5 describes a composition comprising a base in a form of a cream suitable for application to human skin and comprising a plurality of particles of corundum, wherein the plurality of particles of corundum are at least 35% by weight of the composition.

With respect to particulate additives in shaving compositions, Wdowik provides:

In most instances, from about 0.1% to about 20%, by weight will be adequate, while from about 1% to about 10% by weight is normally preferred. However, it is to be understood that in some instances an equivalent "effective amount" of insoluble particulate additives less than 0.1% and/or greater than 20%, by weight, and in thick pastes, solids, and gels even as high as 90% or greater may be used in the practice of the present invention.

Wdowik, column 3, lines 45-53

Independent claim 5 is not obvious over the cited references, because the references do not describe a composition, including a base in a form of a cream

and a plurality of particles that are at least 35% weight of the composition.

Wdowik teaches that in thick pastes, solids and gels, "the effective amount" of insoluble particulate additives may be greater than 20%. Wdowik also identifies acceptable shaving compositions as, "solid, gel, cream, liquid or aerosol."

Column 3, line 3-33. Thus, Wdowik distinguishes creams from those compositions that might have effective amounts of particulates greater than 20%.

Claim 7 depends from claim 5 and therefore contains all limitations of that claim. For at least the reason stated with respect to claim 5, claim 7 is not obvious over the cited references.

Applicant respectfully requests that the Patent Office withdraw the rejection to claims 1-3, 5, 7 and 21-23 under 35 U.S.C. §103(a).




### CONCLUSION

The Patent Office set forth numerous rejections with this final Office Action, including many alternative prior art rejections under 35 U.S.C. §102(b), 102(e), and/or 103(a). Applicant believes each rejection was addressed in the response. It is possible, however, that one or more rejections was overlooked by Applicant. In this regard, Applicant does not concede the validity of any rejection presented in the final Office Action. If the Patent Office believes a rejection was not addressed in this response, Applicant encourages the Patent Office to alert Applicant so the rejection can be addressed. In view of the foregoing, it is believed that all claims now pending, namely claims 1-3, 5, 7, 21-23 patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

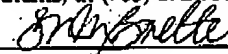
Dated: February 15, 2005

  
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#### CERTIFICATE OF FACSIMILE:

I hereby certify that this correspondence is being facsimile transmitted to: Examiner Frank I. Choi, Mail Stop Amendment, Commissioner for Patents, at (703) 872-9306, on February 15, 2005.

  
Susan M. Barrette

2/15/2005  
February 15, 2005